Scott. II—37—100,000—21-5-48.

Public Services (1948) Department.

SERIES.

G.O. No. 3217

Dated 22-12-48.

[Despatch Abstract.]

ELECTIONS - Provincial Legislature - Appointment of elections agent - written consent of the agent to be filed Rules for conduct of Elections - Amended.

GOVERNMENT OF MADRAS

ABSTRACT.

ELECTIONS - Provincial Legislature - Appointment of electic agents - Written consent of the agent to be filled - Rules for Conduct of Elections - Amended.

- - - -

Act, 1935, and of all other powers enabling him in that behalf, His Excellency the Governor of Madras hereby makes the following amendments to the Madras Legislative Council Electoral (Elections and Election Petitions) Rules, 1936, published with Public (Elections) Department Notification No.46, dated the 27th October 1936, at pages 1448 to 1477 of Part I of the Fort St. George Gazette, dated the 27th October 1936, as subsequently amended:--

AMENDMENTS

1. In rule 16 (2) of the said rules, for the words "and who shall be named in the declaration; " the words" and who shall be named in the declaration with his consent, such consent being recorded by the agent in the declaration form below the candidate's declaration;" shall be substituted.

2. For Schedule II to the said rules, the following Schedule shall be substituted, namely:-

" SCHEDULE II
(Rule 16)
Madras Legislative Council.

I ..... hereby declare that

I have appointed ..... to be my
do hereby appoint
election agent for the election.

Station
Date. Signature of the Candidat

I ..... Have agreed to my
hereby agree
being appointed as election agent to the above candidate.

Station
Date. Signature of the Election Agent."

(BY order of His Excellency the Governor)

Sd/-xxxxxxxxx,
Secretary to Government,
22-2-1948.

To the Superintendent, Government Press, for publication of the Notification in the Fort St. George Gazette.
To All Collectors.
To all Rural Development Officers.
To S.M.L.
To the Legal Department.
To the Local Administration Department.
To the Commissioner of Labour.
To the Development Department.
To the Private Secretary to Governor.
To the Secretariat Library.

(True Copy)

Office Assistant,
NG. Madras Record Office.

Public (Elections) Department.

Press Note No.42 dated 28-2-1949.

The Rules for the Conduct of Elections to the Madras Legislative Assembly and the Madras Legislative Council prescribe that every nomination paper should be accompanied by a declaration inwriting subscribed by the candidate that the candidate has appointed, or does thereby appoint, as his electionagent for the election, either himself or some one other person who is not disqualified for such appointment under the relevant statutory provisions, and who should be named in the delcartion. But the rules do not provide for evidence being furnished as to the election agent's consent to act as such. Under the existing rules, a candidate may thus appoint a person as his election agent without that person's knowledge, and both of them might incur even serious disqualifications and penalties onaccount of any irregularities in the election or failure to discharge the preseribed obligations such as the submission of the return of election expenses.

2. The Government have, therefore, amended the rules suitably so as to require the agent's declaration intimating his consent being furnished, along with the candidates's declaration appointing the election agent. The amendments have been published on pages 148 and 149 of the rules Supplement to Part II of the Fort St. George Gazette dated the 28 th December 1948.

****

PUBLIC (ELECTIONS) DEPARTMENT.

Under rules 15 (2) and 36(2) of the Rules for the conduct of Elections to the Madras Legislative Assembly and under rule 16(2) of the Rules for the Conduct of Elections to the Madras Legislative Council every nomination paper shall be accompanied by a declaration in writing as shown in Schedule II to those rules, subscribed by the candidate that he has appointed or does thereby appoint as his electio agent for the elction either himself or some one other pers who is not disqualified under the Act, or under any order o rule made thereunder, or under an Act of the Provincial Legislature, for the appointment and who shall be named in the declaration; and no candidate shall be deemed to be duly nominated unless suchdeclaration is delivered along wi the nomination paper. There is no provision in these rule that an electionagent should make a declaration before the Returning Officer that he accepts his appointment as an electionagent of the candidate. The effect of this omissio is, that it is open to a candidate to appoint as his electi agent, even a Member of the Legislature without his knowled If the candidaat or his election agent later on fails to file a retnnn of election expenses in the manner and withir time prescribed under the rules, the candidate as well as his agent will incur the disqualifications under the rules, which in the case of the ~~Membr~~ Member of the Legislature wi be loss of his seat. This was ~~appoi~~ pointed out in a recer case. In that case, it was suggested that steps should taken to amend the rules. Two draft notifications amending rules and the Schedule referred to above are accordingly sul mitted for approval . They may be sent to Legal Department for scrutiny before circulation to Hon.Minister (Finance) Hon.Premier and His Excellency the Governor. This amendmer of the rules now is necessary as there may be bye-elections under the existing constitution before the new ~~constition~~ Constitution comes into force .

Sd/-x x,x x x x x x,
16-10-1948.

Cont.

LEGAL DEPARTMENT

The alterations indicated in red ink on the draft may be made.

Sd/-xxxxxxxxx,
27-10-1948.

Notes from XX on page 1 ante may be read.

For orders as to circulation.

Sd/-xxxxxxxxx,
29-10-1948.

THE NOTIFICATIONS MAY BE APPROVED.

Sd/-xxxxxxxx,
30-10-1948

Hon. Minister (Finance) Is it necessary to have a seperate election -agent ?

Of course, if the candidate is bed-ridden or in jail or in foreign countries, agent would be necessary. I prefer no outside agent. please examine.

Sd/-xxxxxx,
H.Minister (Finance)
6-1-1948.

Please see the minutes of Hon.Minister (Finance) on page ante. Under para 1 ofPart II of the Government of India (Provincial Elections) Corrupt Practices and Electio petitions) Order, 1936, it is incumbent on the candidate to appoint either himself or some one other person to be his election agent. Unless the order in Council is amended suitably, it will not be possible to prevent a candidate (who is not disabled as described by Hon.MInister (Finance) from appointing another person to be his election agent.

Legal also may see for remarks.

Sd/-xxxxxxx,
12-11-1949.

---

*above.

* If the order subsists, it could be revoked or amended by the Dominion Legislature. It seems doubtfully whether the Provincial Legislature could legislate under s.291 unless and until the order has been revoked by competant authority.

This order in Council is, I think still in force as a valid provision un s.291 of the Government of India Act, 1935(as is in force now). If so can a amendment be made by the Provincial Legislature ? Legal may advice in thi also.. If the order in Council is a provision "made by this Act" the Provincial Legislature cannot act under s.291-x.

2. A candidate not bed-ridden, but in robust, or in indifferent health, may need an election agent. If t circumstances in which outside election agents may be appoi ted are laid down, the Returning Officer might have to conduct inquiries to satisfy himself that those conditions are satisfied and a decision might not always be easy. ~~This~~

Cont.

This seems to be an arguement in favour of a simple mandatory rate as it stands now, subject only to the amendment proposed in the draft, that is, that the agent's consent should have be obtained.

Sd/-xxxxxxxxxxxx,
13-11-1948.

Legal Department.

The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936 continues to be in force- see sections 8 (2) and 18(3) of the Indian Independance Act, 1947, and Article 3 of the India (Provincial Legislatures) Order, 1947.

2. Section 291 of the Government of India Act, 1935, as adapted by the India (Provincial Constitution) Order, 1947, enables a Provincial Legislature to make provisio by its Act in respect of the matters mentioned in that section in so far as provision with respect to those matters is not mad by the Act. Any provision made by an Order in Council can be said to be made only under the Act and Not by the Act, and no provision appears to have been made by the Act elsewhere in respect of the matter covered by rule 1 of Part II of the Order in Council. It is therefore open to the Provincial Legislature to amend this provision by its Act - See also the last protion of section 18 (3) It will be noticed that the candidate may appoint himself as his electionagent and that he is not bount to appoint another person. There can be no objec objection to so amending the rule as to require the candidate who nominates another person as his electionagent to produce a statement signed by such person signifying that he consents to act as agent.

Sd/-xxxxxxxx,
22-11-1948.

PUBLIC (ELECTIONS) DEPARTMENT.

Please see the minutes of Hon.Minister (Finance) on page 2 ante and notes on page 3-4-above.

The aase may be recirculated for orders with referenc to X on page 3 ante.

Sd/-xxxxxxxx,
2-22-1948.

Legal have advised that the Provincial Legislature can, by legislation, amend the rate requiring the appointment of an election agent the candidate himself or some one else). But it is for consideration whether the matter is so urgent a important as to call for legislation under the existing Constitution, when the New Electoral Law can be expected to be enacted within a year from now. In the United Kingdom, gre importance is attached to the appointment of election agents.

Cont.

The submission in para 2 of my note at page 3 n.f. may also be considered.

For orders.

Sd/-xxxxxxxxx,
2-12-1948.

Sd/-xxxxxxx,
Hon.Minister (Finance)
7-12-1948.

Hon.Minister (Fiance) has agreed to the issue of the notification below. For orders of His Excellency the Governor.

Sd/-xxxxxxx,
11-22-1948.

Sd/-xxxxxxxxx,
His Excellency the Governor,
18-12-1948.

Put up a neat copy ofthe G.O.for my approval for issue.

Sd/-xxxxx,
20-12-1948.

What about issuing a brief Press Note regarding these amendments just to give an publicity.

Sd/-xxxxxx,
20-12-1948.

A clean copy of the draft is put up for approval. After issue the file may be sent to Public Works (I&P) for issue of a Press Note.

Sd/-xxxxxx,
21-12-1948.

Issue atonce a clean copy.

Sd/-xxxxx,
22-12-1948.

*****

Public Works (I&P) Department

The notes of Public (Elections) at the bottom of page 5 abte may be perused. The file has been sent to this Department for drafting and issuing a press note based on the information in the G.O.placed below. Instructions relating to the drafting of press notes and communiques have been issued by Government in G.O.No.1737 Public (General) dated 6-3-1946. According to that, the Departments of the Secretariat should draft them and send them on to this Department for scrutiny. Please see protions marked 'A' and 'B' in para 4 of the G.O. 1737 (Public) Dated 6-8-1946

2. The case may therefore be returned to Public (Elections) who may be requested to send the file to this Department after drafting a press note in accordance with the instructions.

Sd/-xxxxxxxx,
24-12-1948.

Cont.

Public (Elections) Department.

A draft self contained Press Note is submitted for approval.

Sd/-xxxxxx,
6-1-1949.

The draft as revised by me is put up and may be approved.

Sd/-xxxxxx,
8-1-1949.

Sd/-xxxxxx,
Hon.Minister (Finance)
11-1-1949.

Sd/-xxxxxx,
Hon.Premier,
25-2-1949.

Sd/-xxxxx,
Hon.Minister(Public Works)
26-2-1949.

Director of Information and Publicity for issue of the Press note.

Sd/-xxxxxxxxx,
28-2-1949.

P.T. O.

Public Works (I&P) Department.

The press note has been issued. The fine may be returned to Public (Elections) Department.

Sd/-xxxxxx
7-3-1949.

Public (Elections) Department.

The file may be closed as G.O.No.3217, Public (Elections) dated 22-12-1948.